(1)
Supreme Court, U.S.
FILED
162
091420 MAR 18 2010
SUPREME COURT, U.S.
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF MISSOURI, EX. REL,
Chris Kostner, Attorney General
Respondent,
vs.
CALVIN ALLEN, dba Brick House Prod.,
NAACP Officer/Activist,
Petitioner
vs.
STATE OF MISSOURI, EX. REL,
Chris Kostner, Attorney General,
Respondent.

On The Petition For Writ Of Certiorari To The Court Of Appeals Of The State Of Missouri Southern District

PETITION FOR WRIT OF CERTIORARI

Calvin Allen, dba Brick House Productions,
NAACP Officer-Activist, Petitioner
PO Box 1624
Springfield, MO 65801-1624
(417) 873-3498
Counsel of Record for Petitioner
Calvin Allen, Pro Se

QUESTIONS PRESENTED FOR REVIEW

I. Is it a violation of due process that is arbitrary, extraprejudicial demeanor **[i don't give a shit]** that can be construed as race-based prejudice and abused discretion by circuit court overruling all of defendant's reconsideration motions and granting respondent default judgement; that is against the weight of the evidence on January 23, 2008; that defendant's evidence demonstrates that a mistake and excusable neglect that trial court denied defendant due process in submitting facts and evidence and failed to find the answer and response of defendant that was filed September 2006, and that the protective order that was mutually agreed by respondent and defendant was not filed, as a result of respondent's counsel misrepresentation to this court of the protective order and defendant's facts and evidence established a meritorious defense, and that respondent would not be prejudiced as a result of vacating the default judgement? Henceforth, opinion, judgement, and injunctions shall be reversed and remanded for findings of reversible errors.

II. Is it a violation of due process and abuse of discretion when trial court overruled motion to change judge and granted interlocutory default judgement on February 22, 2007, in defendant's absence of said hearing and abused discretion overruling motion to change judge when Missouri supreme court rules of civil procedure authorize promptly and immediate change of judge upon request by any party? Henceforth, opinion shall be reversed and remanded for findings of reversible errors.

III. Is it a violation of due process and abuse of discretion by trial court dismissing defendant's counter-claims and overruling joining of parties on October 3, 2006, whereas, the counterclaim petitions and motion to join parties set forth a meritorious allegation of facts in compliance with statutory law that set forth claims upon which relief can be granted? Henceforth, opinion shall be reversed and remanded for findings of reversible errors.

IV. Is it an abuse of discretion and violation of due process in application of appellate rules partially, error in findings of facts and prejudicial for Missouri Court Of Appeals, Southern District to hold pro se petitioner Allen to a higher standard in complying with appellate briefing rules and procedures during briefing phase, points and issues relied upon than licensed attorneys, other pro se petitioners brief, respondents brief, and trial court docket sheets records in the dismissal of this appeal, on October 14, 2009, opinion and dismissal that in conflict and contrary with its own court's previous opinions, memorandums, orders, inconsistent with other Missouri Court of Appeals, Supreme Court of Missouri, and this supreme court case laws? Henceforth, opinion and dismissal shall be reversed and remanded for finding of reversible errors.

PARTIES TO THE PROCEEDING

In accordance to U.S. Supreme Court rule pursuant to Rule 14.1(b), the following identifies all of the parties appearing here and before the Missouri Court of Appeals, Southern District, Division II.

Calvin Allen, NAACP officer/activist and dba Brick House Productions is the Petitioner here and was the appellant below.

The State of Missouri, Assistant Attorney General Joshua D. Harrel is the Respondent here and is the appellee below.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW ..... ii, 18, 24, 27, 33

TABLE OF AUTHORITIES viii

OPINION AND ORDER BELOW xiv

JURISDICTIONAL STATEMENT xiv

PERTINENT CONSTITUTIONAL PROVISIONS INVOLVED xiv

STATEMENT OF THE CASE 1

STATEMENT OF UNCONTROVERTED FACTS 3

ARGUMENT 16

REASONS FOR GRANTING CERTIORARI 16

I. Is It A Violation Of Due Process That Is Arbitrary, Extraprejudicial Demeanor **[I Don't Give A Shit]** That Can Be Construed As Race-Based Prejudice And Abused Discretion By Circuit Court Overruling All Of Defendant's Reconsideration Motions And Granting Respondent Default Judgement; That Is Against The Weight Of The Evidence On January 23, 2008; That Defendant's Evidence Demonstrates That A Mistake And Excusable Neglect That Trial Court Denied Defendant Due Process In Submitting Facts And Evidence And Failed To Find The Answer And Response Of Defendant That Was Filed September

2006, And That The Protective Order That Was Mutually Agreed By Respondent And Defendant Was Not Filed, As A Result Of Respondent's Counsel Misrepresentation To This Court Of The Protective Order And Defendant's Facts And Evidence Established A Meritorious Defense, And That Respondent Would Not Be Prejudiced As A Result Of Vacating The Default Judgement? Henceforth, Opinion, Judgement, And Injunctions Shall Be Reversed And Remanded For Findings Of Reversible Errors. ..... ii, 18

II. Is It A Violation Of Due Process And Abuse Of Discretion When Trial Court Overruled Motion To Change Judge And Granted Interlocutory Default Judgement On February 22, 2007, In Defendant's Absence Of Said Hearing And Abused Discretion Overruling Motion To Change Judge When Missouri Supreme Court Rules Of Civil Procedure Authorize Promptly And Immediate Change Of Judge Upon Request By Any Party? Henceforth, Opinion Shall Be Reversed And Remanded For Findings Of Reversible Errors. ..... ii, 24

III. Is It A Violation Of Due Process And Abuse Of Discretion By Trial Court Dismissing Defendant's Counter-Claims And Overruling Joining Of Parties On October 3, 2006, Whereas, The Counterclaim Petitions And Motion To Join Parties Set Forth A Meritorious Allegation Of Facts In Compliance With Statutory Law That Set Forth Claims Upon Which Relief Can Be Granted? Henceforth, Opinion Shall Be Reversed And Remanded For Findings Of Reversible Errors. .... iii, 27

IV. Is It An Abuse Of Discretion And Violation Of Due Process In Application Of Appellate Rules Partially, Error In Findings Of Facts And Prejudicial For Missouri Court Of Appeals, Southern District To Hold Pro Se Petitioner Allen To A Higher Standard In Complying With Appellate Briefing Rules And Procedures During Briefing Phase, Points And Issues Relied Upon Than Licensed Attorneys, Other Pro Se Petitioners Brief, Respondents Brief, And Trial Court Docket Sheets Records In The Dismissal Of This Appeal, On October 14, 2009, Opinion And Dismissal That In Conflict And Contrary With Its Own Court's Previous Opinions, Memorandums, Orders, Inconsistent With Other Missouri Court Of Appeals, Supreme Court Of Missouri, And This Supreme Court Case Laws? Henceforth, Opinion And Dismissal Shall Be Reversed And Remanded For Finding Of Reversible Errors. .....vii, 33

CONCLUSION 41

APPENDIX

Opinion Of Missouri Court Of Appeals Southern District 1a

Order Of Missouri Supreme Court Judgement On Application For Transfer 14a

Circuit Court Of Greene County Default Judgement And Order 17a

TABLE OF AUTHORITIES

FEDERAL CASES CITED

Anderson v. Schweiker, 651 F. 2d 306, 308 (5th Cir. 1981) 18

Central Operating Co. v. Utility Workers of America, 491 F. 2d 245, 252 (4th Cir. 1974) 17, 23

Compton v. Alton Steamship Co., 680 F. 2d, 96, 102 (4th Cir. 1979) 17

Cook v. Heckler, 750 F. 2d 391, 392 (5th Cir. 1985) 19

County of Sacramento v. Lewis, 523 U.S. 833, 840 (1998) 32

Griffin v. Wainwright, 777 F. 2d 822, 825 (11th Cir. 1985) 41

Hohn v. United States, 524 U.S. 236 (1998) xiv

Imbler, 424 U.S. 429; *Tower v. Glover*, 467 U.S. 914, 104 S.Ct. 2820 (1984) 29

Metller v. Whiteledge, 165 F.3d 1197, 1204 (8th Cir. 1999) 31

Neitazke v. Williams, 490 U.S. 319, 325 (1989) 26

Ransom v. Heckler, 751 F. 2d 989, 992 (5th Cir. 1983) 18

Richardson v. Perales, 402 U.S. 389, 401; 91 S.Ct. 1420, 1427 (1971) 19

Square Construction Co. v. Washington Metropolitan Area Transit Authority, 657 F. 2d 68, 71 (4th Cir. 1981) 17

Tower v. Glover, 467 U.S. 914, 923 (1984) 30

Tower, 467 U.S. 921, (see) *William v. Hortje*, 827 F.2d 1203, (8th Cir. (1987) 30

Werner v. Carbo, 731 F. 2d 204, 206 (4th Cir. 1984) 17

Werner, 731 F. 2d 206-07 17

Wright v. First National Bank of Altus, OK, 483 F.2d 73 (10th Cir. 1973) 30

MISSOURI CASES CITED

Atkins v. McPhetridge, 213 S.W. 3rd 116, 120 (Mo. App. 2006) 37

Carrol v. AAA Bail Bonds, 6 S.W. 3rd 215, 218 (Mo. App. 1999) 38

Commercial Bank of St. Louis Co. v. James, 658 S.W.2d 17, 23 (MO Banc. 1983) 26

Cooper v. Bluff City Mobile Home Sales, Inc., 78 S.W. 3rd 157, 164 (Mo. App. 2002) 39

Dixon v. Thompson, 235 S.W. 3rd 568 (Mo. App. 2007) 38

Eastwood v. North Cent. Missouri Drug Task Force, 15 S.W.3d 65 (Mo. App. W.D. 2000) 31

Everest Reinsurance Co. v. Kerr, 253 S.W. 3rd 100 (Mo. Ct. App. W.D. 2008) 2

Citing Nazeri v. Mo. Valley College, 860 S.W.2d 303, 306 (Mo. Banc. 1993) 31

Foster v. Village of Browington, 140 S.W. 3rd 603 (Mo. App. 2004) 38

Hyde v. City of Columbia, 637 S.W.2d 251, 254 (Mo. App. 1982) 26

Kingsley v. Barack, 536 S.W.2d 7(Mo. Banc. 1976 Supra) 30

McGill v. The Boeing Company; 235 S.W. 3rd 151 (Mo. App. 2007) 40

Medawar v. Gaddis, 779 S.W.2d 323 (Mo. App. 1989) 25

Murphy v. Carron, 536 S.W. 2d 30, 32 (Mo. Banc 1976) 34

Raack, 720 S.W.2d 637 (Mo. App. 1971) 25

State Ex. Rel. Mountjoy v. Bonacker, 831 S.W.2d 241, 244 (Mo. App. 1992) *Quoting State Ex. Rel. Campbell v. Koan*, 606 S.W.2d 399, 401(Mo. App. 1980) 25

Wilkerson, 943 S.W. 2d 648 *(quoting Anglim v. Mo. Pac. R.R. Co.*, 832 S.W. 2d 298, 303 (Mo. Banc 1992) 24, 33

UNITED STATES CONSTITUTION CITED

United States Constitution, 1st Amendment, Section 2, Free Press (Equal Protection Under the Color of State Law) 35

United States Constitution, 14th Amendment, Section 1 ..... 14, 33, 35

United States Constitution, 14th Amendment, Section 5 ..... 32, 35

MISSOURI CONSTITUTION CITED

Missouri Constitution, 10th Amendment 35

FEDERAL RULES OF CIVIL PROCEDURE

Rule 60 17

Rule 60(b) 17

Rule 60(b)(1) 23, 41

FEDERAL STATUTES CITED

C. Wright & A. Miller, Federal Practice and Procedure, Section 2858, 170 (1973) 23

28 U.S.C. §1254(1) 3

MISSOURI SUPREME COURT RULES OF CIVIL PROCEDURE

Rule 51.00 51

Rule 51.03 25

Rule 51.05 25

Rule 51.05(e) 25

Rule 52.01 25

Rule 52.03 25

Rule 52.04(a) 30

Rule 52.07(a)(6) 27

Rule 55.05 26

Rule 55.06 26

Rule 55.27(a)(6) 27

Rule 55.32 27

Rule 74.01 26

Rule 74.06 28

Rule 84.00 ..... 35, 37, 39, 40

Rule 84.04 ..... 37, 38, 39, 40

Rule 84.04(c)(d) 37

Rule 84.04(d)(1) 38

Rule 84.04(e) 38

Rule 84.06 ..... 39, 40

MISSOURI STATUTES CITED

RSMo. § 407.00 28

RSMo. § 407.010 28

RSMo. § 407.020 28

RSMo. § 407.040 28

RSMo. § 407.050 ..... 28, 29

RSMo. § 407.100 ..... 28, 29

RSMo. § 407.130 28

OPINION AND ORDER BELOW

The West Law reported opinion of the Missouri Court of Appeals, Southern District, filed on October 14, 2009, affirming the judgement of the Circuit Court of Greene County of the State of Missouri appears as Appendix A.

The West Law reported opinion of the Missouri Supreme Court filed on December 22, 2009, denying application for transfer entering mandate and judgement in connection with the opinion of the Missouri Court of Appeals, Southern District, filed on October 14, 2009, appears as Appendix A.

The West Law reported Circuit Court of Greene County order of default judgement and injunction on or about February 23, 2008, appears as Appendix A.

JURISDICTIONAL STATEMENT

The opinion of the Missouri Court of Appeals, Southern District, was filed on October 14, 2009. The order of the Missouri Supreme Court denying application for transfer entering judgement and mandate and filed on December 22, 2009. The jurisdiction of this court is invoked pursuant to *28 U.S.C. §1254(1)*. See *Hohn v.United States, 524 U.S. 236 (1998)*.

PERTINENT CONSTITUTION PROVISIONS INVOLVED

United States Constitution, 1st Amendment, Section 2:

Free press (equal protection under color of state law).
United States Constitution, 14th Amendment, Section 1:
"... nor shall any state deprive any person of life, liberty, or property, without due process of the law ..."
United States Constitution, 14th Amendment, Section 1 and 5
Missouri Constitution, 10th Amendment, Section 1:
"... nor shall any state deprive any person of life, liberty, or property, without due process of the law ..."

STATEMENT OF THE CASE

This civil and misdemeanor action is one involving the construction of Missouri Laws and Statutes that govern the practice of law and Merchandising Practices Act violations, preliminary injunction, and whether Circuit Court erred and abused discretion when dismissing counter-cross-claim petition with prejudice. Circuit Court had pendant jurisdiction on all questions and points. Circuit Court on October 3, 2006; January 23, 2007; February 22, 2007; May 10, 2007; November 2, 2007; and January 25, 2008; February 27, 2008, before the Honorable Judges Sweeney, Burrell, and Curless, entered docket entry and orders, which said ruling was prejudicial, erroneous, multifactious, unfair, misapprehension, arbitrary, and not supported by competent facts and evidence nor statutory law thereof.

Trial court erred and abused discretion in granting default judgement on February 22, 2008, denying defendant's reconsideration motions and pleadings that set forth a meritorious defense and rational argument in law and facts to support claim(s) for judicial review and vacating the default judgement. This Writ of Certiorari and Appeal was timely and properly filed on or before March 22, 2010, and this Honorable Court has pendent jurisdiction.

Trial court entry interlocutory and subsequent default judgement against defendant in this action was prejudicial and improper, notwithstanding petitioner crude and nonprofessional answer to petition; petitioner response consisted of an

unconventional general denial, and response was directed to the court, the Honorable J. Miles Sweeney, setting forth defendant discovery response and answers that referenced the proper case number, reflected the "subject" to be "answer to petition" and stated that it was response to respondent's petition and discovery, which was timely filed and stamped by the clerk of Circuit Court September 13, 2006.

Moreover, after Judge Sweeney's court discovered defendant's answer to petition and response to respondent's discovery that was filed on September 13, 2006, and at that time respondent and defendant mutually agreed to compose a protective order in protecting the civil rights complainants' privacy that was approved by the court. However, respondent's counsel McKiel misrepresented to Circuit Court a protective order that was not mutually agreed upon.

Petitioner provided specific denials to majority allegations in the petition with diligent efforts at and during the default hearing; however, Judge Curless contemptuous juris, extreme, race-based prejudice demeanor denied petitioner's reconsideration motion and petitioner vigorously expressed and requested to be allowed oral arguments of his motions for reconsideration as was ordered by previous Judge Sweeney's court, prior to recusal, that found petitioner's response insufficient; *Everest Reinsurance Co. v. Kerr, 253 S.W. 3rd 100 (Mo. Ct. App. W.D. 2008).* Thus, this Supreme Court shall enter order of dismissal and affirmation of default judgement shall be reversed and remanded for findings of reversible errors.

The issues on appeal and writ of certiorari involve categories of issues and cases reserved for the exclusive jurisdiction of the United States Supreme Court. Thus, jurisdiction hes with this court pursuant to 28 U.S.C. §1254(1).

STATEMENT OF UNCONTROVERTED FACTS

On or about February 24, 2006, Missouri Attorney General Jay Nixon and his agent Douglas McKiel filed frivolous, defamatory, libelous, slanderous preliminary injunction and cause of action against respondent alleging posing as an attorney for NAACP. That defendant McKiel accused respondent Allen of practicing law without a license. That defendant McKiel accused respondent Allen of falsely claiming association with the local branch of NAACP according to the statement released by defendant McKiel. That defendant McKiel released this infamous, libelous, slanderous statement via Attorney General of Missouri website.

On or about March 31, 2006, defendant Allen filed counter-petition and complaint in Circuit Court, alleging defamation, slander, liable, breach of contract, equal protection, and predicated by conspiracy. On or about April 4, 2006, amended counter complaint and joining of parties and claims as counter defendants. Defendant amended Petition to include counter defendants and parties counter defendants class—Jeremiah J. Nixon, Tom Groves, James Trusell, David Bowen, Trenna Underhil, Chris Cannon Douglass McKiel and Larry Maddox—as counter defendants.

The other above defendants, KOLR-10-TV, KDEB-27, KSPR-33, KY-3-TV, KTTS radio, and Springfield News-Leader further released and disseminated this infamous, defamatory, libelous, and slanderous media press release that specifically named respondent Allen as the owner of the now defunct Brick House Lounge on Commercial Street.

The other above defendants, KOLR-10-TV, KDEB-27, KSPR-33, KY-3-TV, KTTS radio, and Springfield News-Leader further released and disseminated this infamous, defamatory, libelous, and slanderous media press release that specifically named respondent Allen as the owner of the now defunct Brick House Lounge on Commercial Street making a specific point known "not the Calvin L. Allen, long-time executive director of Springfield Community Center." However, petitioner was deprived and denied equal protection of free press as a result of being denied an official response to the highly publicized defamatory, slanderous, and libelous lawsuit.

That defendant attorney general agent McKiel further alleged in the suit to require Allen to fully refund money received from the widow. That defendant attorney general agent McKiel further alleged and pleaded Allen to reimburse the attorney general's office for its cost and pay penalties to the state.

That the other above defendants, KOLR-10-TV, KDEB-27, KSPR-33, KY-3-TV, KTTS radio, and Springfield News-Leader further released and disseminated this infamous, defamatory, libelous, and

slanderous media press release that specifically named respondent Allen as the owner of the now defunct Brick House Lounge on Commercial Street making a specific point known "not the Calvin L. Allen, long-time executive director of Springfield Community Center." However, petitioner was deprived and denied equal protection of free press as a result of being denied an official response to the highly publicized defamatory, slanderous, and libelous lawsuit.

On September 13, 2006, petitioner responded to and with answer to petition and request for discovery directed by respondent and response to the infamous, frivolous, defamatory, slanderous, and libelous lawsuit included complamt R-12 School District breach portrait contract.

On October 3, 2006, this Court entered its order compelling Defendant Allen to answer certain interrogatories and request for admissions propounded by Respondent in this action with in 20) days. That on October 4, 2006 Respondent and Defendant begin working on protective order directed by this court to compose a protective order to protect the privacy of NAACP complainants. (see Defendant exhibit-1- from reference herein). That on October 5, 2006, Respondent and Defendant continued working on the protective order directed by this court.

On October 11, 2006, Defendant faxed the following amendments to the protective order per agreement by respondent and defendant. That defendant on October 18, 2006, faxed there with the amended protective order in accordance to Respondent

and Defendant agreement and filed the same on October 18, 2006, the amendments to the protective order per agreement by respondent and defendant.

On October 18, 2006, hand-delivered the amended protective order to Judge Sweeney in open court and informed the bailiff of the same, that bailiff assured defendant that Judge Sweeney would be provided a the copy of the letter and the amended protective order for signature. Defendant provided the final amended protective order in regard to Respondents and Defendants agreement.

TRANSCRIPT: VOLUME I—THE HONORABLE J. MILES SWEENEY

On May 10, 2007, amended motion for change of judge and motion for shortening of time and amended motion for change of judge were granted upon hearing and argument by defendant and the hearing avers;

> */sic./* THE COURT: Okay, Mr. Allen's amended motion to change judge, opposition to motion for default judgement, amended motion to dismiss. THE COURT: Mr. Allen, I see you are simply asking me to reconsider the original documents. */sic./* (See Transcript, Vol. I, page 5)

Defendant, in further argument and discussion in Judge Sweeney's court began to acknowledge the facts surrounding the civil rights complaint and his

past experience with the third-party civil rights complainant;

> /*sic.*/ THE COURT: Well, what happened was the form ... verdict was wrong ... Mr. McGee's attorneys ... supply a form of verdict ... was improper. /*sic.*/ (See Transcript, Vol. I, page 8)

Defendant in further argument and assertion set forth further conflict of interest that warrants recusal;

> /*sic.*/ MR. ALLEN: I am assuming ... as you know ... conflict you were involved ... I think you would be a little biased.

Defendant, through aggressive, vigorous zeal, set forth the preliminary injunction and penalties by respondent, set forth conflict with civil rights issues that warrant recusal;

> /*sic.*/ MR. ALLEN: And, your honor the state does not have one iota of evidence that I put myself out ... as lawyer. /*sic.*/ (See Transcript, Vol. I, pages 10-15)

As a result of defendant's vigorous argument, Judge Sweeney acknowledged the conflicts with the civil rights complainant and connection and considering the recusal for cause;

> THE COURT: Judge Conklin does all the civil work, and this case will ... go to Judge Conklin.

> MR ALLEN: I have no objections to Judge Conklin, your honor. I think he would be an excellent stipulation.
>
> THE COURT: Here is my entry today. Change of judge is granted ... case to clerk for reassignment. Judge Conklin would consider the motions to reconsider and amended motions to dismiss. */sic./* (See Transcript, Vol. I, pages 10-15)

TRANSCRIPT: VOLUME II—THE HONORABLE CHARLES CURLESS, SPECIAL ASSIGNMENT

On January 23, 2008, upon case being transferred to Judge Conklin's court by Judge Sweeney withdrew on his own motions. Thus, compelled the Supreme Court to make special appointment, which was special judge Charles Curless and the hearing commenced on January 23, 2008, at 10:30 a.m., to wit;

> */sic./* THE COURT: Mr. Allen, we talked ... about ... motion to reconsider ... Judge Sweeney's prior rulings ... I had indicated ... I was not going to ... do that ... that motion overruled.
> MR. ALLEN: I do, your honor, in rebuttal I responded ... to that ruling, your honor. These claims ... cross-claims ... filed ... were filed timely. Missouri Supreme Court Rule ... 55.06 ... joinder of claims ... a party asserting claim to relief ... original claim ... counter-claim ... cross-claim ... a third-part claim as many claims ...

> legal or equitable as a party has ... against an opposing party. *[sic.]* (See Transcript, Vol. II, page 2)

CROSS EXAMINATION OF MARGIE COLON

Defendant's cross-examination of state investigator Margie Colon set forth she was the assigned investigator and the time she started investigating this case;

> *[sic.]* Q. Ms. Colon, during your investigation ... when did you start this investigation?
> A. I believe it was around the middle or end of 2005.
> Q. Was the investigation initiated before the petition was filed?
> A. Yes.
> Q. What investigation ... did you do ... prior ... to petition being filed?
> A. I interviewed a witness.
> Q. Who was the witness?
> A. Barbara Howard. *[sic.]* (See Transcript, Vol. II, pages 3-17)

Further cross-examination of state investigator set forth with specificity the one and only witness she interviewed was Ms. Barbara Howard and further set forth a letter she had received from an insurance company;

> *[sic.]* Q. What other investigation did you do before this petition was filed?

A. I believe I spoke with or reviewed a letter from ... a representative ... insurance company.

Q. Would you ... state to court ... what insurance company ... and the contents ... substance ... of that letter?

A. Well, it has been awhile ... I believe ... company Mutual of Omaha.

Q. Did you or did you not receive ... letter from your agent ... attorney general ... agents ... you received from Mutual of Omaha?

A. I don't remember ... where ... got ... letter from.

Q. You don't know where you got the letter form?

A. Correct.

Q. You investigated ... an infamous crime of ... you know practicing law ... without license ... a criminal offense?

A. It can be charged that way, yes.

Q. Okay, what inquiries did you make ... with Ms. Howard? Why did you go to Ms. Howard?

A. Because we had received information ... had dealings with you.

Q. Where did you receive ... that information ... Ms. Colon?

A. It was ... form of a file ... from ... consumer division complaint unit.

Q. Do you have a copy of that?

A. I don't have it with me. /sic./ (See Transcript, Vol. II, pages 17-18)

Defendant, through further cross-examination of Ms. Colon, she attested that she did not have a copy of the letter from the consumer division on the day she was in court. That Ms. Colon further attested that Mutual of Omaha was the insurance company in which the complaint was filed through the consumer division;

/sic./ MR. HARREL: Your honor ... like to ... object ... this line ... questioning. The defendant ... in default.

MR ALLEN: Your honor, in regard ... what he is saying ... totally irrelevant. In listening to ... jargons ... it got nowhere ... being objectionable ... dealing with issues ... relevant to ... default judgement.

MR ALLEN: He wouldn't have her on the stand ... investigating to find out ... to cause this

> default judgement ... the evidence ... trying to obtain, your honor, how does she derive at her investigation?
>
> Q. How long did you investigate the case?
>
> A. Eight hours.
>
> Q. You say about 8 hours? How much do you get paid an hour? *[sic.]* (See Transcript, Vol. II, pages 16-19)

Defendant, through aggressive cross-examination of Ms. Colon, the state investigator's testimony was directly relevant to this cause of action and further Judge Curless's court undisputedly demonstrated and purported overt demeanor that was race-based and judicial prejudice by Judge Curless's court expressing **"I DON'T GIVE A SHIT"**;

> *[sic.]* THE COURT:I am trying ... to do ... right under ... the law ... follow the rules ... as I am sure Judge Sweeney.
>
> THE COURT: Hey, let me explain ... something to you. Remember my prior statement? I don't give a shit. *[sic.]* (See Transcript, Vol. II, pages 27-28)

Defendant Allen was subjected during cross-examination to numerous irrelevant objections by the state and Judge Curless's overt and contemptuous demeanor and expression **"I DON'T GIVE A SHIT"** from the bench;

/sic./ MR. ALLEN: I'm going to ask ... the time ... she submitted wages as liability and damages. Where is due process here? I have a right to face my accuser.

THE COURT: You did at one time. Now we're talking about damages. And let's talk about damages, I mean ...

THE COURT: If you've been to law school, maybe you understand ... but you haven't ... I have. I've been on bench ... I practice law ... I'm not going ... put up ... bunch of nonsense.

MR ALLEN: I agree with you, Judge Curless. None of this is nonsense. I didn't put ... witness on the stand ... he put ... witness on the stand.

THE COURT: You know what? After the 8th or 9th time you told me that, I'm beginning to understand that, but **"I still don't give a shit."**

MR. ALLEN: I understand, Judge ... I have a right to cross-examine.

THE COURT: No, you don't have. Now, you can ask her about damages. If you want to do that, let's go with it.

> MR. ALLEN: What damages did you cite or find as a result of your investigation? *[sic.]* (See Transcript, Vol. II, pages 29-30)

As a result of defendant Allen's diligent, aggressive and zealous cross-examination of investigator Colon, it was quite evident that the damages and/or liabilities did not exist, and depended on Judge Curless's overt, contemptuous juris demeanor, action, and conduct during the hearing was far less than professional. That demeanor purports race-based prejudice coupled with judicial prejudice through extreme abuse of discretion by Judge Curless.

On February 26, 2008, defendant filed motion to vacate and set aside permanent injunction with costs and penalties was faxed to Judge Charles Curless by circuit clerk.

On February 27, 2008, per e-mail from Judge Curless to the Circuit Court Clerk, setting forth defendant motion to vacate and set aside permanent injunction with costs and penalties was overruled.

On March 7, 2008, defendant filed a notice of appeal. This appeal follows.

On October 17, 2008, petitioner filed transcript consisting of two (2) volumes and on October 28, 2008, filed certified legal file that consisted of two (2) volumes in the Missouri Court of Appeals, Southern District, and was accepted by the court with no cited deficiencies.

On February 6, 2009, petitioner filed brief of appellant in the Missouri Court of Appeals, Southern District and accepted as is with no cited deficiencies.

On April 10, 2009, State of Missouri, ex rel., Attorney General Chris Koster, by Assistant Attorney Joshua D. Harrel, filed respondent brief.

On May 12, 2009, petitioner Calvin Allen, NAACP officer/activist, and dba Brick House Productions, filed reply brief of appellant and requested oral argument and was accepted by the Missouri Court of Appeals, Southern District, and accepted as is with no cited deficiencies.

However, on October 14, 2009, the Missouri Court of Appeals, Southern District, issued its opinion and dismissal on page 4, paragraph 3, set forth with specificity:

> *[sic]"the newly assigned judge considered all of defendants pending motions, including his motion for reconsideration and entered a permanent injunctions and final judgment of default in favor of respondent and against defendant"[sic]*

This finding by appellate court is erroneous in that the transcripts of the hearing on January 23, 2008, before the newly assigned Judge Curless clearly purport that judge cureless did not considered any of defendant reconsideration motions in chief.

[sic] The court: okay. Let me stop you. I wanted to know.... not going to argue those motions.... I am overruling the motions to reconsider all of his prior rulings;[sic]

[sic] The court: Mr. Allen... let me stop you... you know...not going back to judge Sweeny rulings.... I was saying honestly..... let me just put... bluntly as I can. ***I DON'T GIVE A SHIT*** *what happened, okay? Are you following me on that? [sic]*

Defendant cross-examination of the states witness testimony was directly relevant to this cause of action, however judge Curless demeanor purported and demonstrated overt, race based and prejudicial against defendant by judge Curless court expressing " **I DON'T GIVE A SHIT,** which is extreme violations of due process, in violations of the U.S. Constitution and Missouri constitutions. Appellate court erred in this finding and/or overlooked.

HENCEFORTH, petitioner comes before this honorable U.S. Supreme Court with four (4) questions, points, and issues relied upon in this appeal and writ of certiorari. Thus, this honorable court, upon review of this petition shall grant writ of certiorari and adjudicate the same, reversing and remanding the default judgement as a result of finding of reversible errors in violation of due process and abuse of discretion.

ARGUMENT
REASON FOR GRANTING CERTIORARI

A. STANDARD OF REVIEW—DEFAULT JUDGEMENT

In reviewing trial court denial of petitioner's motion for relief from the default judgement, the Supreme Court is mindful that the disposition of motion under Rule 60(b) ordinarily is a matter within the discretion of the trial court, which will not be disturbed on appeal absent a showing of abuse of that discretion; *Werner v. Carbo, 731 F. 2d 204, 206 (4th Cir. 1984).* Accordingly, *Square Construction Co. v. Washington Metropolitan Area Transit Authority, 657 F. 2d 68, 71 (4th Cir. 1981); Central Operating Co. v. Utility Workers of America, 491 F. 2d 245, 252 (4th Cir. 1974).* As the Supreme Court has stated in previous cases, in order to obtain relief from a judgement under Rule 60(b), a moving party must show that his motion is timely, that he has a meritorious defense to the action, and that the opposing party will not be unfairly prejudiced by having the judgement set aside. If the moving party makes such a showing, he must then satisfy one or more of the six grounds for relief set forth in Rule 60 in order to obtain relief from the judgement. See e.g. *Werner, 731 F. 2d 206-07; Compton v. Alton Steamship Co., 608 F. 2d 96, 102 (4th Cir. 1979).* Thus, in the instant case the court shall find petitioner set forth meritorious defense and the excusable neglect and further set forth one of the six other grounds, misrepresentation by respondent's counsel of protective order directed to Circuit Court for relief under Rule 60(b) of Federal Rules of Civil Procedure. Hence, default judgement shall be vacated, reversed, and remanded for findings of reversible errors.

However, despite the Supreme Court's limited function, it is imperative that the court scrutinize the record in its entirety to determine the reasonableness of the decision and dismissal reached by the Court of Appeals, trial court judges Curless, Burrell, and Sweeney and whether substantial evidence exists to support it; *Ransom v. Heckler, 715 F 2d 989, 992 (5th Cir. 1983); Anderson v. Schweiker, 651 F 2d 306, 308 (5th Cir. 1981).* Thus, these are the maxims in which Supreme Court reviews and makes its determination.

I. Is It A Violation Of Due Process That Is Arbitrary, Extraprejudicial Demeanor **[I Don't Give A Shit]** That Can Be Construed As Race-Based Prejudice And Abused Discretion By Circuit Court Overruling All Of Defendant's Reconsideration Motions And Granting Respondent Default Judgement; That Is Against The Weight Of The Evidence On January 23, 2008; That Defendant's Evidence Demonstrates That A Mistake And Excusable Neglect That Trial Court Denied Defendant Due Process In Submitting Facts And Evidence And Failed To Find The Answer And Response Of Defendant That Was Filed September 2006, And That The Protective Order That Was Mutually Agreed By Respondent And Defendant Was Not Filed, As A Result Of Respondent's Counsel Misrepresentation To This Court Of The Protective Order And Defendant's Facts And Evidence Established A Meritorious Defense, And That Respondent Would Not Be Prejudiced As A Result Of Vacating The Default Judgement? Henceforth, Opinion, Judgement, And Injunctions Shall Be Reversed And Remanded For Findings Of Reversible Errors.

The U.S. Supreme Court decision on appeal is limited to the question of whether there is "substantial evidence" of record to support trial court judgement of default and injunction by trial court judge Curless. Substantial evidence is more than a scintilla, less than preponderance, and is such that a reasonable mind might accept it as adequate to support a conclusion; *Richardson v. Perales, 402 U.S. 389, 401, 91 S.Ct. 1420, 1427, 28 L.Ed. 2d 842 (1971).* Further, on review, the court cannot reweigh the evidence, try the issues de novo, or substitute the court's judgement for that of trial court judge; *Cook v. Heckler, 750 F 2d 391, 392 (5th Cir. 1985).* Thus, this honorable Supreme Court shall find that respondents, in granting this default judgement in their favor, did not produce one scintilla piece of evidence to support said default judgement.

On January 23, 2008, upon case being transferred to Judge Conklin's court by Judge Sweeney withdrew on his own motions. Thus, compelled the supreme court to make special appointment and assign judge, which was special judge Charles Curless and the hearing commenced on January 23, 2008, at 10:30 a.m., to wit;

> */sic./* THE COURT:Mr. Allen, we talked ... about ... motion to reconsider ... Judge Sweeney's prior rulings ... I had indicated ... I was not going to ... do that ... that motion overruled ... I don't know ... make some sort of record or not. */sic./* (See Transcript, Vol. II, page 2)

Thus, the Supreme Court shall find Judge Curless's court abused discretion and violated petitioner's due process by not permitting petitioner to submit facts and evidence.

On September 13, 2006, petitioner responded to and with answer to petition and request for discovery directed by respondent and response to the infamous, frivolous, defamatory, slanderous, and libelous lawsuit included complaint R-12 School District breach portrait contract.

Defendant and the court set forth argument and response by the court in considering defendant due process;

[sic.] THE COURT: Okay, let me stop you. We're not going to ... argue ... motions ... rulings ... of Judge Sweeney ... I am overruling ... motion to reconsider ... I don't want ... argument ... motions ... and I'm not going to consider.

MR. ALLEN: Well, my assertion ... of those pleadings asserted ... under Missouri Supreme Court Rules ... motions that overruled and denied joining parties and claims ... these parties ... requested be joined as legitimate, indispensible parties.

THE COURT: I think ... we need ... at least ... take up the motion on default judgement ... and Mr. Allen's motions at the same time.

MR. HARREL: Section from the Missouri Merchandising Practice Act, Chapter 407 RSMo. includes the main section of the act 407.020,

> authorizing provision for this case 407.100. Your honor ... petition ... in this case ... layout ... violations of 407.020 ... attorney general ... alleging ... Mr. Allen engaged in.

MR. HARREL: By failing to answer ... state case ... rather state's petition ... Mr. Allen ... has engaged ... or had admitted ... having engaged ... the acts in the petition. *[sic.]* (See Transcript, Vol. II, pages 3-17)

Defendant, through aggressive cross-examination of Ms. Colon, the state investigator's testimony was directly relevant to this cause of action and further Judge Curless's court undisputedly demonstrated and purported overt demeanor that was race-based and judicial prejudice by Judge Curless's court expressing **"I DON'T GIVE A SHIT"**;

> *[sic.]* THE COURT: Hey, let me explain ... something to you. Remember my prior statement? I don't give a shit.
>
> Q. All right, Ms. Colon, what merchandising ... unfair merchandising ... you discovered during your investigation?
>
> MR. HARREL: Objection.
>
> THE COURT: Sustained. We're doing damages, Mr. Allen. That's all, not liability. That's over. It's a done deal.

> THE COURT: Rule book. I don't know ... another one that goes along with these ... this is what I'm doing. It may not suit ... the way you want ... present your case ... but, hey, sorry man, that's just, these are the rules. We're going to go by them. *[sic.]* (See Transcript, Vol. II, pages 27-28)

Defendant Allen was subjected during cross-examination to numerous irrelevant objections by the state and Judge Curless's overt and contemptuous demeanor and expression **"I DON'T GIVE A SHIT"** from the bench;

> *[sic.]* MR. ALLEN: I'm going to ask ... the time ... she submitted wages as liability and damages. Where is due process here? I have a right to face my accuser.
>
> THE COURT: You did at one time. Now we're talking about damages. And let's talk about damages, I mean ...
>
> THE COURT: If you've been to law school, maybe you understand ... but you haven't ... I have. I've been on bench ... I practice law ... I'm not going ... put up ... bunch of nonsense.
>
> THE COURT: You know what? After the 8th or 9th time you told me that, I'm beginning to understand that, but I still don't give a shit.

> MR. ALLEN: I understand, Judge ... I have a right to cross-examine.
>
> THE COURT: No, you don't have. Now, you can ask her about damages. If you want to do that, let's go with it.
>
> MR. ALLEN: What damages did you cite or find as a result of your investigation? *[sic.]* (See Transcript, Vol. II, pages 29-30)

Thus, the Supreme Court shall find there were no damages and that default judgement and injunction were erroneous and unconstitutional.

Petitioner further asserts to this court in order to grant the relief from the judgement under Rule 60(b)(1), petitioner would show the existence of the mistake, inadvertence, surprise, or excusable neglect as ground for relief. As the Supreme Court stated, a party seeking relief from a default judgement under Rule 60(b)(1) must show not only that petitioner has a meritorious defense, but also "that he had an acceptable excuse for lapsing into default ... '*Central Operating Co. 491 F. 2d 252;* see also *C. Wright & A. Miller, Federal Practice & Procedure Sec. 2858, 170 (1973)* (party seeking relief from a judgement under Rule 60(b)(1)' must make some showing of why he was justified in failing to avoid mistake or inadvertence.") Thus, in this case petitioner Allen is entitled to relief from the judgement under Rule 60(b)(1) because petitioner has demonstrated and offered an acceptable excuse inadvertence and neglect by trial court in

failing to find that petitioner Allen did respond to discovery and file answer to the complaint.

Accordingly, this Honorable Supreme Court shall find due process violations and vacate, set aside, and remand Greene County Circuit Judgement of default injunctions and penalties, in that the Supreme Court finds due process violations, reversible errors, and Missouri Supreme Court has pendant subject matter jurisdiction in the above cause of action.

B. STANDARD OF REVIEW –ABUSE OF DISCRETION

Appellate court reviewed *de novo* judicial discretion is abused when the trial court's ruling is clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration; *Wilkerson, 943 S.W. 2d 648 (quoting Anglim v. Mo. Pac. R.R. Co., 832 S.W. 2d 298, 303 (Mo. Banc 1992).* Thus, these are the maxims appellate court reviews to determine trial court abuse of discretion.

II. Is It A Violation Of Due Process And Abuse Of Discretion When Trial Court Overruled Motion To Change Judge And Granted Interlocutory Default Judgement On February 22, 2007, In Defendant's Absence Of Said Hearing And Abused Discretion Overruling Motion To Change Judge When Missouri Supreme Court Rules Of Civil Procedure Authorize Promptly And Immediate Change Of Judge Upon Request By Any Party? Henceforth, Opinion

Shall Be Reversed And Remanded For Findings Of Reversible Errors.

Defendant, pursuant to Missouri Supreme Court Rules of Civil Procedure, Rule 51, requested change of judge; that defendant has sustained extra-prejudicial demeanor, violation of due process, and abuse of judicial discretion by Judge Sweeney as a result of docket entry order on October 3, 2006. Thus, the court shall find trial court abused discretion, failing to recuse and change the judge by Judge Sweeney prior to the adverse rulings.

Petitioner asserts in both civil actions and criminal cases, the right to disqualify a judge or commissioner is one of the keystones of our legal administrative edifice. State ex rel. Mountjoy v. Bonacker, 831 S. W. 2d 241, 244 (Mo. App. 1992). (Quoting State Ex Rel. Campbell v. Koan, 606 S. W. 2d 399, 401 (Mo. App. 1980). No system of justice can function at its best or maintain broad public confidence is a litigant can be compelled it submit his case in a court where there litigants believe the judge is incompetent or prejudice. Raack, 720 S. W. 2d 637 (Mo. App. 1971). That this is a crucial need for public confidence in the judicial system requires the courts to liberally construe statutes and rules in favor of right to disqualify. Raack, 70 S. W. 2d 943. Consequently, it is but surprising that the right of a litigant to disqualify a judge had been described as "virtually unfettered." Medawar v. Gaddis, 779 S. W. 2d 323, (Mo. App. 1989). Thus, the Honorable Judge Jay Miles Sweeney was disqualified and rescued for cause in the above cause

of action and case transferred to the Honorable Judge Dan Conklin.

Accordingly, this Honorable Supreme Court shall find due process violations and vacate, set aside, and remand Greene County Circuit Judgement of default injunctions and penalties, in that the Supreme Court finds due process violations, reversible errors, and Missouri Supreme Court has pendant subject matter jurisdiction in the above cause of action.

C. STANDARD FOR APPELLATE REVIEW FOR MOTION TO DISMISS

This appellate court reviewed *de novo* motion to dismiss and concedes the truth of all facts were pleaded. In the assessment of the sufficiency of a petition under such a motion, therefore, all facts properly pleaded are assumed as true, the averments are given liberal construction and the petition is given the favor of those inferences fairly deducible from the facts alleged; *Commercial Bank of St. Louis Co. v. James, 658 S.W.2d 17, 23 (Mo. Banc 1983).* A petition suffices against a motion to dismiss, accordingly if the averments given ever reasonable intendment, invoke a substantive remedy; *Hyde v. City of Columbia, 637 S.W.2d 251, 254 (Mo. App. 1982); Rule 55.05—It is within the perspective of these maxims the court of appeals review the judgement of dismissal.*

The U.S. Supreme Court, in *Neitzke v. Williams, 490 U.S. 319, 325, (1989),* held the "fact" that *pro se,* complaint fails to state a claim upon which relief could be granted does not, in and of itself,

warrant *sua sponte* dismissal of case as frivolous; complaint can be dismissed as frivolous only where petitioner(s) can make no rational argument in law or fact to support their claim for relief.

III. Is It A Violation Of Due Process And Abuse Of Discretion By Trial Court Dismissing Defendant's Counter-Claims And Overruling Joining Of Parties On October 3, 2006, Whereas, The Counterclaim Petitions And Motion To Join Parties Set Forth A Meritorious Allegation Of Facts In Compliance With Statutory Law That Set Forth Claims Upon Which Relief Can Be Granted? Henceforth, Opinion Shall Be Reversed And Remanded For Findings Of Reversible Errors.

Now defendant Calvin Allen, dba Brick House Productions, and NAACP officer and civil rights activist, pursuant to Missouri Supreme Court Rules of Civil Procedure Rule 55.27(a)(6) of and respectfully submits in reply to opposition to dismiss petition for preliminary and permanent injunction, civil penalties and other relief . That petition failed to purport a claim upon which relief can be granted, is frivolous, defamatory, slanderous, libelous, discriminatory, and extreme breach of public credibility, confidence, and infamous erroneous crime that constitutes willful and wanton malicious prosecution.

On or about March 31, 2006, defendant Allen filed counter-petition and complaint in Circuit Court, alleging defamation, slander, liable, breach of contract, equal protection, and predicated by conspiracy. On or

about April 4, 2006, amended counter complaint and joining of parties and claims as counter defendants.

Defendant Allen, procedural argument is based upon its construction of §407.100, and the interrelationship of that section with §407.040 and §407.050. The first of those sections grants authority for the filing of this type of proceeding and provides:

> *[sic]* "Whenever it appears to the attorney general that a person has engaged in or is engaging in any practice declared to be unlawful by sections 407.010 to 407.130 he may, after notice to such person, if such notice can be given in the manner provided in section 407.040, seek and obtain in an action in a circuit court an injunction prohibiting such person from continuing such practices or engaging therein or doing any acts in furtherance thereof. Such notice shall state generally the relief sought and be served in accordance with section 407.050 at least three days prior to the institution of such action." *[sic]*

The Supreme Court shall take judicial notice, under those provisions it is mandatory that a three-day notice be given to the proposed defendant before court action is actually commenced. The manner in which that notice is to be given is specified by reference to the provisions in 407.040 relating to "Civil Investigative Demands". Although the notice required by § 407.100 is different from the Civil Investigative Demand authorized by § 407.040, the method of service is thus made identical for both.

Thus, this omission by counter-defendant is evidence of fact that counter-defendants action and misconduct were ministerial and *ultra vires* authority in nature and the court shall note 407.100 also contains a provision that the three-day notice be served "in accordance with the provisions of § 407.050." Thus, counter-defendants do not qualify for official qualified sovereign immunity as result of ministerial action and misconduct.

Finally, the court shall take judicial notice the attorney general here did not give a three-day notice prior to filing suit against defendant Allen and, did not attempt to pursue any Civil Investigative Demand. Defendant asserts this omission and fact deprived the Circuit Court of any power to precede on respondents' claims an injunction. Moreover, that this cloak of immunity is limited to the attorney's performance of regular advocacy functions, and like the immunity afforded prosecutors, does not extend to intentional misconduct accomplished outside of the scope of the attorney's function as an advocate for the state. *See Imbler*, 424 U.S. at 429; *Tower v. Glover*, 467 U.S. 914, 923, 81 L. Ed. 2d 758, 104 S. Ct. 2820 (1984) (state attorneys general are not afforded absolute immunity for intentional misconduct by virtue of alleged conspiratorial action which deprives citizens of federal rights).

The immunity envisioned by the common law, and discussed by the Supreme Court, attaches only to those activities within counsel's normal duties as an advocate for state or client. When an attorney goes beyond those boundaries and commits an act of

intentional misconduct, the protections of absolute immunity no longer apply. *Tower*, 467 U.S. at 921. *See Williams v. Hartje*, 827 F.2d 1203, 1208-10 (8th Cir. 1987). Thus, in the instance case counter-defendants do not qualify under any immunity doctrine as result of *ultra vires* authority. Accordingly, counter-defendants motion to dismiss counter-claims shall be denied.

Allen vigorously asserts, our Missouri Supreme Court recently has had the opportunity and occasion to discuss the new approach relative to nonjoinder and dismissal. In *Kingsley v. Burack*, 536 S.W.2d 7 (Mo. banc 1976), the court stated that "[the] rule proceeds on the basis that a person may be conceptually necessary but nevertheless allows the suit to proceed unless the absent party is pragmatically indispensable in the particular case.

Whether or not a person is an indispensable party must be determined by applying the criteria of the rule, and the finding of indispensability is the end result -- not the starting point." *Kingsley v. Burack*, supra, 536 S.W.2d 11. See also *Wright v. First National Bank of Altus, Oklahoma*, 483 F.2d 73 (10th Cir. 1973) discussed in *Kingsley v. Burack*, supra, 536 S.W.2d 11. Under the modern approach, therefore, it must first be determined under Rule 52.04(a) whether the absent person is to be joined and, after it is determined that parties should be so joined.

The petition is reviewed in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause

that might be adopted in that case, and no attempt is made to weigh any facts alleged as to whether they are credible or persuasive. *Eastwood v. North Cent. Missouri Drug Task Force*, 15 S.W.3d 65, 67 (Mo. App. W.D. 2000) (*citing Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 306 (Mo. banc 1993). Thus, in the instant counter- and cross-claim petition of counter-respondent aver a cause of action in support of the statutory law which is asserted in that the counter-claim petition aver facts to support counter-claim action.

Further, counter-respondent and cross-claimants assert public and private corporations can be held liable for the unconstitutional acts of its officials, agents, supervisors, and when those acts implement or execute an unconstitutional policy or custom of the corporation; *Metller v. Whiteledge, 165 F.3d 1197, 1204 (8th Cir. 1999).* ("Policy" is an official policy, a deliberate choice of a guiding principle or procedure made by an official with authority; "custom" is a persistent, widespread pattern of unconstitutional conduct of which officials, supervisors have notice and subsequently react with deliberate indifference or tacit authorization.

Defendant thereby incorporated by reference therein the motions and pleadings joining parties and claims and cross-claims requesting change of judge that was filed in this court on May 19, 2006; July 12, 2006; October 3, 2006, and November 14, 2006, as though fully set forth therein. Judge Sweeney was a trial Judge that involved one of defendant NAACP

Civil Rights complaint whereas the complainant was subjected to an irregular jury verdict.

Whereas, the Honorable Judge Jay Miles Sweeney was disqualified and rescued for cause in the above cause of action and case transferred to the Honorable Judge Dan Conklin.

Moreover, dismissing counterclaims with prejudice violated the due process clause of the Fourteenth Amendment prohibits state and local governments from depriving "any person of life, liberty, or property without due process of the law...." *U.S. Const. Amend. XIV § 1* and 5. The due process clause has both procedural and substantive components; *County of Sacramento v. Lewis, 523 U.S. 833 840 (1998).* Both components require the presence of an interest in life, liberty, or property to support a due process claim. Thus, in the instant case, Judge Sweeney extremely deprived petitioner of its constitutional and statutory rights and due process.

Accordingly, this Honorable Supreme Court shall find due process violations and vacate, set aside, and remand Greene County Circuit Judgement of default injunctions and penalties, in that the Supreme Court finds due process violations, reversible errors, and Missouri Supreme Court has pendant subject matter jurisdiction in the above cause of action.

D. STANDARD OF REVIEW FOR ABUSE OF DISCRETION

Appellate court reviewed *de novo* judicial discretion is abused when the trial court's ruling is clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration; *Wilkerson, 943 S.W. 2d 648 (quoting Anglim v. Mo. Pac. R.R. Co., 832 S.W. 2d 298, 303 (Mo. Banc 1992)*. Thus, these are the maxims appellate court reviews to determine trial court abuse of discretion.

IV. Is It An Abuse Of Discretion And Violation Of Due Process In Application Of Appellate Rules Partially, Error In Findings Of Facts And Prejudicial For Missouri Court Of Appeals, Southern District To Hold Pro Se Petitioner Allen To A Higher Standard In Complying With Appellate Briefing Rules And Procedures During Briefing Phase, Points And Issues Relied Upon Than Licensed Attorneys, Other Pro Se Petitioners Brief, Respondents Brief, And Trial Court Docket Sheets Records In The Dismissal Of This Appeal, On October 14, 2009, Opinion And Dismissal That In Conflict And Contrary With Its Own Court's Previous Opinions, Memorandums, Orders, Inconsistent With Other Missouri Court Of Appeals, Supreme Court Of Missouri, And This Supreme Court Case Laws? Henceforth, Opinion And Dismissal Shall Be Reversed And Remanded For Finding Of Reversible Errors.

Petitioner compelled to express to this Supreme Court in reviewing this default judgement and injunction, this court is to sustain the judgement of the court below unless there is no substantial evidence to

support it, it is against the weight of evidence, it erroneously declares the law, and/or it erroneously applies the law; *Murphy v. Carron*, 536 S.W. 2d 30, 32 (Mo. Banc 1976). Here, the Supreme Court shall find the court erred and abused discretion and erroneously applied the law when entering the default judgement and injunction.

This U.S. Supreme Court shall review court of appeals opinion of October 14, 2009, and dismissal on page 4, paragraph 3, set forth with specificity:

> *[sic]"the newly assigned judge considered all of defendants pending motions, including his motion for reconsideration and entered a permanent injunctions and final judgment of default in favor of respondent and against defendant"[sic]*

This finding by appellate court is erroneous in that the transcripts of the hearing on January 23, 2008, before the newly assigned judge Curless clearly purport that judge cureless did not considered any of defendant reconsideration motions in chief

> *[sic] The court: okay. Let me stop you. I wanted to know.... not going to argue those motions.... I am overruling the motions to reconsider all of his prior rulings;[sic]*

> *[sic] The court: Mr. Allen... let me stop you... you know....not going back to judge Sweeny rulings.... I was saying honestly..... let me just put... bluntly as I can.* ***I DON'T GIVE A SHIT***

what happened, okay? Are you following me on that? [sic]

Defendant cross-examination of the states witness testimony was directly relevant to this cause of action, however judge Curless demeanor purported and demonstrated overt, race based and prejudicial against defendant by judge Curless court expressing " **I DON'T GIVE A SHIT,** which is extreme violations of due process, in violations of the U.S. Constitution and Missouri constitutions. Appellate court erred in this finding and/or overlooked.

Appellate court opinion and dismissal order on page 4, paragraph 3, set forth with specificity: "defendant filed a brief with this court consisting of 58 pages and a reply brief of 90 pages which we considered in light of Missouri Court rule 84 governing procedures in Missouri appellate courts."

Appellate court overlooked and failed to find that respondents brief superseded petitioner brief points relied upon, with (8) points of primary response and (27) points secondary response compared to only (3) points relied upon by petitioners brief; coupled with (21,000) words and (87) pages of respondent brief; and further coupled (110) on hundred and ten cases and authority to research. In which the petitioner had (15) days to filed a reply brief. Petitioner Allen was substantially prejudice by appellate court in its dismissal, as an issue and points petitioner was subjected to in reply. Moreover, this appellate court granted petitioner extension of time and extended brief that was filed in this court April 20, 2009.

Appellate court filed its opinion on October 14, 2009. Defendant/petitioner filed motion for rehearing and application of transfer to Missouri Supreme Court on October 29, 2009. Appellate court ruled and filed opinion of denial and overruled to transfer to Supreme Court on November 5, 2009. Missouri Supreme entered judgement and denied application for transfer on December 22, 2009. Thus, this Writ of Certiorari followed.

HENCE, petitioner comes before this court requesting Writ of Certiorari setting forth reasons that Court of Appeals used a higher standard for petitioner in complying with appellate redress rules and procedures than other licensed attorneys and is in direct conflict with case law citations in conflict with its own court, other courts of appeals, and this court. Thus, this honorable Supreme Court shall reverse and remand opinion and order for findings of reversible errors.

Accordingly, this Honorable Supreme Court shall find due process violations and vacate, set aside, and remand Greene County Circuit Judgement of default injunctions and penalties, in that the Supreme Court finds due process violations, reversible errors, and Missouri Supreme Court has pendant subject matter jurisdiction in the above cause of action.

ANALYSIS AND DISCUSSION

Petitioner Allen contends and asserts in *Atkins* the Court of Appeals, Southern District, accepted petitioner's brief **"FILED AS IS"** by its court, as did

the Court of Appeals, Southern District, with Allen's brief, accepted and cited no deficiencies. It stated three (3) points primary relied upon none of which this court brought to petitioner attention during the briefing period nor to the attention of petitioner during oral arguments of the appeal, that petitioners briefs did not comply with rule- 84.04. The Court of Appeals, Southern District, in *Atkins v. McPhetridge, 213 S.W.3d 116, 120 (Mo.App.2006)* raised this deficient briefing issue during oral argument. Likewise, if this was a substantial noncompliance by petitioner Allen, appellate court had a duty of purporting impartiality and fairness to all parties, by bringing these deficiencies to the attention of petitioner during oral argument so that petitioner Allen could cure the deficiencies to avoid this extreme prejudice by Appellate Court subjected petitioner to the adjudicating phase of this appeal.

Defendant/petitioner conceded in part that brief and reply brief are deficient, whereas:

1) a detailed table of contents, with page references, and a table of cases (alphabetically arranged), statues and other authorities cited, with reference to the pages of brief where they are cited.
Here, whereas, the petitioner failed to comply with "just" the reference, number of pages, and location of brief where the authority and case law or statue is cited. However, defendant/petitioner assert that brief and reply briefs are in substantial compliance with appellate rule 84, that warrants review, that governs briefs on appeal and compliance with Rule 84.04 (c)(d).... "statement of material facts."

Point(s) and issues relied upon in petitioner brief(s). This Supreme Court must view and consider circuit court records, transcripts, legal files and the docket sheets in holding parties to be in compliance with the rules and procedures. This court in fairness to all parties must considered that trial court shall be held to some fault in non compliance with appellate rules and procedures. Whereas, the court shall find trial court docket entries orders contain "multifarious" expressions of dismissal and overruling fail to comply with rule- 84.04, further, coupled with multiple ruling; *Dixon v. Thompson, 235 S.W. 3d 568 (Mo. App.2007)*.

This court must find that petitioner Allen (3), points did not violate rule-84.04 (d) (1), requirements, that they "identify the trial court rulings, questions presented for determination and action that petitioner challenges; state legal reason for the petitioner claim of reversible error; and explain in summary fashion, in context of the case, support claim of reversible error. A point written contrary to the requirement of rule-84.04, preserved nothing for review; *Foster v.Village of Brownington, 140 S.W 3 d 603 (Mo. App.2004)*; thus, this court must find that petitioners points relied upon preserved points for review, if viewed in the context of trial court records and transcripts.

Moreover, petitioner pursuant to rule-84.04 (e), Brief and reply briefs contain an argument section that discusses the point relief upon. Petitioner "argument purports how the principles of law and that facts of the case interact"; *Carrol v. AAA Bail Bonds, 6 S.W.3d 215, 218 (Mo. App.1999)*. Petitioner Allen brief argument sectioned is entitled, "Argument" and reply

brief argument sectioned entitled, "argument, points and issues relied upon. In it petitioner lists the points and issues, with standards for appellate court review. As petitioner, has obligations to cite appropriate and available precedent and authority in which petitioner expects to prevail citing case law and statutory law. This court must find Allen points cite relevant precedent and authority. Whereas, Allen arguments cite relevant law and explains how it applies to the applicable facts and are not abandoned; *Cooper v. Bluff City Mobile Home Sales, Inc; 78 S.W.3d 157, 164 (Mo. App. 2002).* Thus, this court shall find that none of Allen points were abandoned.

Violations of Mo. Sup. Ct. R. 84.04 are grounds for a court to dismiss an appeal. Whether an appeal will be dismissed for failure to comply with R. 84.04 is discretionary. That discretion is generally not exercised unless the deficiency impedes disposition on the merits. A brief impedes disposition on the merits where it is so deficient that it fails to give notice to the court and to the other parties as to the issue presented on appeal.

> ***[sic.] The claimant filed his notice of appeal and appellate brief pro se. The claimant's brief was handwritten and did not substantially comply with Mo. Sup. Ct. R. 84.04 or Mo. Sup. Ct. R. 84.06. The appellate court, sua sponte, issued an order describing in detail the deficiencies of the claimant's brief, directing the claimant to file an amended brief that complied with Mo. Sup. Ct. R. 84, and notifying the***

> ***claimant that his failure to do so would result in the dismissal of his appeal. The claimant subsequently filed his amended appellate brief, which was typewritten in accordance with Mo. Sup. Ct. 84.06, but still did not comply, in form or substance, with Rule 84.04. The appellate brief preserved nothing for review. The brief was inadequate to invoke the jurisdiction of the appellate court. [sic.]***

In the Court of Appeals of Missouri, Eastern District, in *McGill v. The Boeing Company, 235 S.W.3d (Mo.App.2007)* the court, *sua sponte*, issue an order describing in detail the deficiencies of petitioner brief, directing the petitioner to file an amended brief that compiled with Mo.Sup.Ct.R.84, and notifying the petitioner that his failure to do so would result in the dismissal of appeal. Thus, the Supreme Court shall find Missouri Court of Appeals, Southern District, deprived and denied petitioner this due process of appeal, that is in direct conflict with Missouri Court of Appeals, Western District, Eastern District, its own court, and the Missouri Supreme Court similar decisions and determinations.

Accordingly, this Honorable Supreme Court shall find Appellate Court abused discretion and violated due process violations and shall vacate, set aside, and remand Greene County Circuit Judgement of default injunctions and penalties, in that the Supreme Court finds due process violations, reversible errors, and Missouri Supreme Court has' pendant subject matter jurisdiction in the above cause of action.

REQUEST ORAL ARGUMENT

Petitioner(s), pursuant to Federal Rules of Civil Procedure, Rule 60.0(b)(1) respectfully request oral argument of the points and issues herein. Petitioner Allen, as laymen proceeding *pro se*, not schooled in the finer points of law are entitled to special consideration by this court; *Griffin v. Wainwright, 777 F. 2d 822, 825 (11 Cir. 1985)*. Thus, petitioner's pleadings and brief deficiencies in regard to Rule 84.04 did not warrant dismissal of this appeal by Missouri Appellate Court, Southern District.

REASONS FOR GRANTING THE PETITION

This case presents four issues, points, and important jurisdictional questions:

Are Missouri Courts and Court of Appeals in conflict and contrary to U.S. Constitution Amendment 14, Due Process?

On October 14, 2009, opinion and dismissal that in conflict and contrary with its own court's previous opinions, memorandums, orders, inconsistent with other Missouri Court of Appeals, Supreme Court of Missouri, and this Supreme Court case laws? Henceforth, opinion and dismissal shall be reversed and remanded for finding of reversible errors.

CONCLUSION

Petitioner(s) Allen plea and pray for the aforementioned reasons set forth above, that trial

Court erred and abused discretion in its rulings, orders, and judgements.

Further, Petitioner Allen respectfully submits to this court setting forth meritorious points and issues that warrant granting of the Write of Certiorari in this appeal. Petitioner Allen, Brick House Productions, NAACP/officer activist have been substantially prejudiced in the trial court and appellate court redress phase in this appeal. Thus, petitioner Allen respectfully, in good faith, in this honorable supreme court liberally granting the Writ of Certiorari.

WHEREFORE, petitioner Allen, Brick House, NAACP officer/activist plea and pray that Writ of Certiorari be granted and any other relief this honorable court deems fair and just.

Respectfully submitted,

3-20-10
Date

Calvin Allen, *Pro Se*
NAACP Officer Activist/
Brickhouse Production,
Petitioner
PO Box 1624
Springfield, MO 65801-1624
(417) 873-3498

MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT
DIVISION II

STATE OF MISSOURI, ex. Rel.
CHRIS KOSTER, Attorney General,

Plaintiff-Respondent,

VS.

CALVIN ALLEN,

Defendant-Appellant.

FROM THE CIRCUIT COURT OF GREENE COUNTY

Honorable Charles Curless, Special Judge

DISMISSED

The State of Missouri, at the relation of its Attorney General, Chris Koster, 1 (plaintiff) filed a petition in two counts for preliminary and permanent injunction, civil penalties, and other relief against Calvin Allen (defendant), for violation of § 484.020,[1,2] the unauthorized practice of law, and § 407.020, engaging in unfair merchandising practices. The circuit court

---

[1] See Rule 52.13(d).

[2] Statutory references are to RSMo 2000.

entered a default judgment granting plaintiff a permanent injunction with costs and penalties. A motion to vacate and set aside the default judgment was filed by defendant and denied by the circuit court. Defendant appeals. This court concludes that defendant's appeal should be dismissed. The petition for preliminary and permanent injunction and civil penalties filed by plaintiff alleged defendant entered into an agreement to represent Ms. Barbara Howard "in all matters in connection with [her] need for professional legal redress consulting" in the collection of insurance benefits following her husband's death. Howard was the named beneficiary under her deceased husband's life insurance policy.

Letters were sent by defendant to the insurance company advising that Ms. Howard was represented by defendant with the Springfield Branch of (the National Association for the Advancement of Colored People (NAACP). The agreement between defendant and Ms. Howard was on NAACP letterhead. It provided for fees to defendant of $75.00 per hour, or 15% to 25% of any Settlement Ms. Howard signed the authorization for defendant " to represent [her] and communicate with [her] in regard to court settlement of anything pertaining to and in reference to the accidental death claim" for her deceased husband against the insurance company. The Insurer had denied payment under the policy on the basis that the death of Mr. Howard was not from accidental causes. The agreement and authorization were attached to the petition, which alleged defendant is not a member of the Missouri Bar Association, is not licensed to practice law in the State of Missouri, and is not

authorized by the NAACP to act on its behalf in legal matters.

Defendant, who was at all times in the cause, including the appeal, pro se, failed to file an answer to plaintiff's petition even after his motion to dismiss and his amended motion to dismiss had been overruled. Defendant did, however, file, in addition to his motions to dismiss, counterclaims against plaintiff and at least seven other defendants, including various local media outlets and the president of the (local chapter of NAACP alleging "race discrimination" and "predicated and premeditated conspiracy, retaliation, malicious prosecution," libel, "deprivation of constitutional rights free of being accused of infamous crime and fraud," slander and defamation. Defendant also filed amended counterclaims, a motion to join additional parties and claims for just adjudication, a motion for a change of judge, arid an amended motion for change of judge, None of the counterclaim defendants were ever served summons.

Plaintiff served defendant with a request for interrogatories seeking answers directly related to the allegations, among others, in the petition of his contractual relationship with Ms. Howard and his representation of Ms. Howard in her claim made against the life insurance; company. Defendant filed an identical objection to each interrogatory asserting each was overbroad, burdensome, not calculated to lend to admissible evidence, work product, and violation of agent / client privilege.

Plaintiff also filed a motion to dismiss defendant's

counter claims and a motion to compel answers to interrogatories.

A hearing was held on plaintiff's motion to compel answers to the interrogatories propounded to defendant, motion to dismiss counterclaims, and defendant's other various motions. The circuit court overruled defendant's motions, dismissed defendant's counterclaims, and ordered defendant to answer plaintiff's interrogatories within 20 days.

The parties later agreed to extend the time for defendant to answer the interrogatories by filing a protective order to maintain the confidentiality of the discovery responses. Defendant, however, still failed to answer the interrogatories then, or at any other time, but filed a motion to vacate and set aside the court's order dismissing defendant's counterclaims and overruling his motion to join additional parties. Defendant also moved for a change of judge. Plaintiff filed a motion for default judgment based upon defendant's failure to answer interrogatories and otherwise comply with the courts orders.

All of the motions were set for hearing before the circuit court. Defendant failed to appear at the hearing. The court overruled defendant's motion and entered an interlocutory default judgment in favor of plaintiff. A hearing on the interlocutory judgment was set for a later date. Defendant filed an amended motion to dismiss, amended motion for change of judge, and a pleading designated "Opposition to Motion for Default Judgment." The presiding Judge granted defendant's amended motion for change of

judge, Thereafter, every Judge in the 31st circuit recused. The case was finally assigned by the Supreme Court of Missouri to a judge from outside the circuit, Charles D. Curless.

The newly assigned Judge considered all of defendant's pending motions, including his motion for reconsideration, and entered a permanent injunction and final judgment of default in favor of plaintiff and against defendant. Defendant then filed a motion to vacate and set aside the injunction and judgment which was also overruled. This appeal by defendant followed.

Defendant filed a brief with this court consisting of 58 pages and a reply brief of 90 pages which we consider in the light of Missouri Court Rule 84 governing procedure in Missouri Appellate Courts. Rule 84.04 governs the requirements for an appellate brief. Subsection (a) of the rule requires that an appellant's brief contain:

(1) A detailed table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with reference to the pages of the brief where they are cited;
(2) A concise statement of the grounds on which jurisdiction of the review court is invoked;
(3) A statement of facts;
(4) The points relied on;
(5) An argument, which shall substantially follow the order of the points relied on; and
(6) A Short conclusion stating the precise relief sought.

Subsections (b) through (e) of Rule 84.04 specify what does, and does not, meet each of the above requirements. Subsection (c) provides:

(c) **Statement of Facts.** The statement of facts shall be a fair and concise statement of the facts relevant to the questions presented for determination without argument.

Subsection (d) provides:

(d) Points Relied On.

(1) where the appellate court reviews the decision of a trial court, each point shall;

(A) identify the trial court ruling or action that the appellant challenges;

(B) state concisely the legal reasons for the appellant's claim or reversible error; and

(C) explain in summary fashion why, in the context of the case, those legal reasons support the claim of reversible error.

The point shall be in substantially the following form: "The trial court erred in [*identify the challenged ruling or action*], because [*state the legal reasons for the claim or reversible error*], in that [*explain why the legal reasons, in the context of the case, support the claim of reversible error*]."

(4) Abstract statements of law, standing alone, do not comply with this rule. Any reference to the record shall be limited to the ultimate facts necessary to inform the appellate court and the other parties of the issues. Detailed evidentiary facts shall not be included.

(5) Immediately following each "Point Relied On," the appellant, relator, or petitioner shall include a list of cases, not to exceed four, and the constitutional, statutory, and regulatory provisions or other authority upon which that party principally relies.

Defendant's appellate brief fails to comply with subsections (c) and (d) of Rule 84.04. Defendant's statement of facts is 24 pages in length. It is labeled, "Statement of Uncontroverted Material Facts with Summary of Argument," Argument is interspersed throughout the entire statement. Inclusion of argument in a statement of facts fails to comply with Rule 84.04(c). Reed v. Cirtin, 280 S.W 3d 143, 145-46 (Mo. App. 2009).The brief also fails the test of brevity and concseness set out in Rule 84.04(c). Thirteen pages, over half of the statement of facts, is single-spaced with mostly incomplete portions of testimony quoted from the transcript amounting to little more than phrases or pieces of sentences strung together with ellipses.

The brief also fails to comply with Rule 84.04 (d) (1). in that it completely omits the requirements of subsections (d)(1)(B) and (d)(1)(C). Each of the points relied on in defendants brief identifies and complains of multiple rulings of the trial court, but fails to state the legal reason(s) for the claim of reversible error or to explain why those legal reasons support a claim of reversible error in the context of the case. Rule 84.04(d)(1) Each point fails substantially to comply with the rule. Defendant's points relied on appear as follows in his brief.

I. CIRCUIT COURT ERRED, VIOLATED DUE PROCESS, EXTREME PREJUDICE, AND ABUSE OF DISCRETION, OVERRULLING AND SUBSTAINING [PLAINTIFF'S) MOTION TO DISMISS DEFENDANT'S COUNTERCLAIMS AND OVERRULING DEFENDANT'S MOTIONS JOINING

PARTIES AND CLAIMS ON OCTOBER 3, 2006. HENCEFORTH, ORDER SHALL BE REVERSED AND REMANDED FOR FINDINGS OF REVERSIBLE ERRORS.

II. CIRCUIT COURT ERRED, VIOLATED DUE PROCESS, AND ABUSED DISCRETION, DENYING AND OVERRULING DEFENDANT'S MOTION TO CHANGE JUDGE, GRANTED INTERLOCUTORY DEFUALT JUDGEMENT, AND GRANTED ALL [PLAINTIFF] MOTIONS ABSENT OF DEFENDANT'S PRESENCE AT SAID HEARING ON FEBRUARY 22, 2007. HENCEFORTH, ORDER SHALL BE REVERSED AND REMANDED FOR FINDINGS OF REVERSIBLE ERRORS.

III. CIRCUIT COURT ERRED, VIOLATED DUE PROCESS, THAT IS ARBITRARY AND CAPRICIOUS, EXTRA PREJUDICIAL DEMEANOR THAT WAS RACE BASED AND JUDICIAL PREJUDICE AND ABUSED DISCRETION, OVERULLING ALL OF DEFENDANT'S RECONSIDERATION MOTIONS AND GRANTING [PLAINTIFF) DEFAULT JUDGMENT THAT IS AGAINST THE WEIGHT OF THE EVIDENCE ON JANUARY 23, 2008 HENCEFORTH JUDGEMENT, INJUNCTIONS, AND ORDERS SHALL BE REVERSED AND REMANDED FOR FINDINGS OF REVERSIBLE ERRORS.

Subsections (d) (1) (B) and (d) (1) (C) of Rule 84.04 require that a point relied on state why the ruling or action complained of is erroneous and wherein the evidence supports the ruling appellant asserts the trial

court should have made. ***Stacy v. Department of Social Services***, 147 S. W. 3d. 846, 853-54 (Mo. App. 2004). A point relied on that fails to state wherein and why the trial court erred does not comply with Rule 84.04(d). ***Storey v. State***, 175 S.W.3d 116,126 (Mo. banc 2005).

Further, each of the points relied on in defendant's brief assigns error to numerous actions or filings by the trial court. Point I assigns error to the trial court's rulings on plaintiff's motion to dismiss defendant's counterclaims and defendant's motion to join parties and claims. Defendant's counterclaims include three counts; defendant's motion to join parties and claims sought to join numerous counter-defendants and claims. Point II assigns error to the trial Court's ruling on defendant's motion for change of judge, plaintiff's motion for default Judgment and "all plaintiff motions." Point III assigns error to the trial court's ruling on "all of defendant's reconsideration motions" and entering default judgment. Defendant's motion for reconsideration alone addresses three separate motions, defendant's motion to add parties and claims, defendant's counterclaims, and defendant's "cross claims." Points relied on containing multifarious allegations of error fail to comply with Rule 84.04. ***Dixon v. Thompson***, 235 S.W. 3d 568. 571 (Mo. App. 2007); ***Atkins v. McPhetridge***, 213 S.W. 3d 116, 120 (Mo. App. 2006).

Every deficiency in defendant's brief noted above also applies to defendant's 92-page reply brief which also includes in the first 16 pages a recitation of his personal history, including his birth, educational

career, athletic pursuits. employment record from 1978 forward, his operation of a lounge and entertainment business, his "public service as a civil rights activist," and "legal redress" activities, including prior legal matters in Greene County, none of which has more than the most tenuous relationship, if any at all, to the legal matters named in the petition.

A brief that fails to comply with Rule 84.04 preserves nothing for appellate review. ***McGill v. Boeing Co.***, 235 S. W. 3d 575, 578 (Mo. App. 2007). Compliance with the requirements of Rule 84.04 is mandatory, To hold otherwise would require an appellate court to become an advocate for the appellant by speculating about the facts, point:.; relied on, and argument he or she failed to present. **Id**. "the requirements of Rule 84.04 are equally applicable to pro se appellants. **Steltenpohl v. Steltenpohl** 256 S.W. 3d. 597, 598 (Mo.App, 2008); **Ward v. United Engineering Co**., 249 S.W. 3d 285, 287 (Mo. App. 2008); **McGill v. Boeing Co., supra,** at 577. "Judicial impartiality, judicial economy, and fairness to all parties necessitates that do not grant *pro se* appellants. Preferential treatment" with regard to compliance of the rules of procedure, **Ward v. United Engineering Co., supra.**

The deficiencies of defendant's brief impede appellate review. The points relied on fail to give notice to this court of the exact issue, or issues, presented on appeal. See **Wheelhouse Marina Real Estate L.L.C. v. Bommarito**,. 284 S.W. 3d 761, 767 (Mo.App. 2009);**Patterson v. Warten, Fisher Lee & Brown, L.L.C.,** 260 S,\V.3d 417,419 (Mo.App, 20(8). Violations

of Rule 84.04, as exhibited in defendant's brief, are grounds to dismiss an appeal. **Wheelhouse Marina Real Estate, L.L.C. v. Bommarito, supra; Patterson v. Warten, Fisher, Lee & Brown, L.L.C, supra.**

Because of defendant's substantial failure to comply with Rule 84.04, it is unnecessary For this court to address defendant's points of error. However, a gratuitous review of defendant's points on appeal discloses no prejudice to defendant by dismissal on procedural grounds. Defendant's appeal is dismissed. Judgment of the trial court is affirmed.

Donald Barnes, Senior Judge
Scott, C.J, and Rahmeyer, J. concur
Filed: October 14, 2009
Pro Se Appellant: Calvin Allen
Respondent's attorney: Chris Koster, Joshua David Harrel

MISSOURI COURT OF APPEALS

SOUTHERN DISTRICT

No. SD29022

Circuit Court Case No. 106CC0821

STATE OF MISSOURI, ex rel. CHRIS KOSTER, Attorney General,	)
Plaintiff-Respondent,	)
vs.	)
CALVIN ALLEN	)
Defendant-Appellant.	)

MANDATE

APPEAL FROM THE CIRCUIT COURT OF GREENE COUNTY

Now on this day the Court, being sufficiently advised of and concerning the premises, does order and adjudge that said appeal be and the same is hereby dismissed, all in conformity with the opinion of this court herein delivered, and that respondent recover of appellant costs and charges herein expended, and have execution therefore.

Opinion filed.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Missouri Court of Appeals, Southern District, at my office in the City of Springfield this 28th day of December, 2009.

SANDRA L. SKINNER, Clerk

In the Supreme Court
Of Missouri
SC90539
SD29022

September Session, 2009
State of Missouri ex rel.
Chris Koster, Attorney General,

Respondent,

vs. (TRANSFER)

Calvin Allen,
Appellant.

Now at this day, on consideration of the appellant's application to transfer the above- entitled cause from the Missouri Court of Appeals, Southern District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI- S.Ct.
I, Thomas F. Simon, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the September Session, 2009, and on the 22nd day of December, 2009, in the above-entitled cause.

Given under my hand and seal of said Court, at the City of Jefferson, this 22nd day of December, 2009.

Clerk

D.C

Supreme Court of Missouri

VS.

MANDATE

JUDGMENT

THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

STATE OF MISSOURI, ex rel. JEREMIAH W. (JAY) NIXON,	)	
Plaintiff,	)	
vs.	)	Case No.106CC0821
CALVIN ALLEN	)	
Defendant.	)	

ORDER OF DEFAULT JUDGMENT GRANTING PERMANENT INJUNCTION WITH COSTS AND PENALTIES

Now on this 23rd day of January, 2008, the above matter comes on Plaintiffs Motion for Default Judgment. Plaintiff appears by Assistant Attorney General Joshua David Harrel, Defendant appears pro se I appears not.

The Court finds that Defendant was duly served with Plaintiffs Petition for Preliminary and Permanent Injunction, Civil Penalties, and other Relief on March 2, 2006, by the Sheriff of Greene County, Missouri, thereby making Defendant's Answer due on or before April 2nd, 2006. Defendant filed a Motion to Dismiss on March 31st, 2006. This motion was overruled on October 3rd, 2006, and this Court ordered Defendant to file an answer within twenty (20) days, thereby

making Defendant's answer due on October 3rd 2006. Defendant has not filed an Answer or other responsive pleading within the time period dictated by the Missouri Rules of Civil Procedure and ordered by the Court, and is therefore in default. This Court issued an Interlocutory Default judgment against Defendant on February 22nd, 2007. Defendant filed an Opposition to Motion for Default Judgment on May 9th, 2007. The Court found that this Opposition to Motion for Default Judgment did not state facts constituting a meritorious defense and show good cause as required for motions attempting to set aside default judgments by Missouri Rule of Civil Procedure 74.05(d), thus, Defendant's Opposition to Motion for Default Judgment was overruled. Accordingly, pursuant to Missouri Rule of Civil Procedure 74.05 (a); Plaintiff's Motion for an Order of Default Judgment should be and is hereby SUSTAINED.

The Court further finds that Plaintiff served Defendant with Plaintiffs First Request for Admissions on April 20th, 2006. The Court overruled Defendant's objections to Plaintiffs First Request for Admissions on October 3rd, 2006, and gave Defendant 20 days to answer same. Plaintiff later consented to allow Defendant 20 days from this Court's entry of its protective order on October 17th to answer the discovery. Defendant did not file answers within the 20 days provided by this Court's order, and has not filed answers as of the date of this hearing, thus, pursuant to Missouri Rule of Civil Procedure 61.01(c), the genuineness of any relevant documents or the truth of any relevant and material matters of fact contained in Plaintiffs First Request for Admissions

shall be taken as admitted by the Defendant.

Pursuant to Missouri Rule of Civil Procedure 74.05 (a), the Court received evidence, by testimony provided by witnesses produced by Plaintiff and by documents taken to be admitted as genuine by Defendant; and statements, taken as admitted to be true by defendants pursuant to Missouri Rule of Civil Procedure 61.01 (e), supporting the relief requested on the nature and extent of relief available to Plaintiff under Chapter 407, RSMo (Missouri's Merchandising Practices Act). After reviewing and considering the evidence presented, the Court hereby enters default judgment and grants injunctive relief, civil penalties and costs against Defendant, and finds Defendant liable for all of the acts alleged by Plaintiffs Petition, including that Defendant violated Section 407.020, RSMo and awards as follows:

1. Pursuant to Section 407 100.1, RSMo, Defendant and his agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the Order by personal service or otherwise, are permanently enjoined from:

a.Engaging in any acts or activities in violation of Chapter 407, RSMo 2000;
b. Practicing law without a license;
c. Operating a law business without a license;
d. Representing that he is authorized by the National Association for the Advancement of Colored People to legally represent people on behalf of the NAACP, when in fact he is not so authorized; and

c. Making assertions in the advertising and sale of merchandise or services which are not in accord with the facts.

2. Pursuant to Section 407.130, RSMO, a Default Judgment is entered against Defendant in the further amount of Nine Hundred Seventy Three and 96/100s Dollars ($973.96) to be paid to the Missouri Merchandising Practices Revolving Fund for costs and expenses incurred by the Attorney General of Missouri as a result or the investigation and prosecution of this case,

3. Pursuant to Section 407, 100.6, RSMo, a Default Judgment is entered against Defendant in the amount of Three Thousand and 00/100s Dollars ($3,000.00) to be paid to the Greene County Treasurer; as Custodian of the Greene County Public School Fund, representing civil penalties.

4. If less than the full amount of the Default Judgment is recovered, then the amount recovered will:

a. First, be applied to the Missouri Merchandising Practices Revolving Fund representing costs of investigation and prosecution;

b. Second, be paid to the Greene County Treasurer representing civil penalties.

DEFAULT JUDGMENT AND PERMENENT INJUNCTION IS SO ENTERED ON THIS 23rd DAY OF JANUARY, 2008. LET EXECUTION ISSUE.

The Honorable Charles Curless
Assigned by the Missouri Supreme Court En Banc to Hear and Dispose of this Matter